

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES ELSTON, #1277919)	
)	
Plaintiff,)	
)	Case No. 2:18-cv-00019 RLW
v.)	
)	JURY TRIAL DEMANDED
JOHNNIE POLLARD, et al.)	
)	
Defendants.)	

ANSWER AND AFFIRMATIVE DEFENSES

Defendants Johnnie Pollard and Joshua Zuccarini, by and through undersigned counsel, file their Answer to Plaintiff's Complaint. [Doc. #1]

I. PLACE OF PRESENT CONFINEMENT

Defendants admit the allegations in this paragraph of Plaintiff's Complaint.

II. PREVIOUS CIVIL ACTIONS

A. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph A and, therefore, deny the same.

B. No response is required because paragraph B, and subparts 1-6, do not contain any factual allegations.

III. GRIEVANCE PROCEDURES

A. Defendants admit the allegations in paragraph A.

B. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph B and, therefore, deny the same.

C. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph C and, therefore, deny the same.

D. No response is required because paragraph D does not contain any factual allegations.

IV. PARTIES TO THIS ACTION

A. Plaintiff

1. Defendants admit that James Elston is the plaintiff in this case.

2. Defendants deny that plaintiff is currently incarcerated at the Moberly Correctional Center.

3. Defendants admit that plaintiff's registration number is 1277919.

B. Defendant(s)

1-3. The allegations in paragraphs 1-3 are directed to others; therefore, no response is required from these Defendants. To the extent a further response is required, Defendants deny the same.

4. Defendants admit that they are named as defendants in this action. The remaining allegations in this paragraph are directed to others; therefore, no response is required from these Defendants. To the extent a further response is required, Defendants deny the same.

V. COUNSEL

A. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph A and, therefore, deny the same.

B. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph B and, therefore, deny the same.

C. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph C and, therefore, deny the same.

D. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph D and, therefore, deny the same.

E. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph E and, therefore, deny the same.

F. No response is required because paragraph F does not contain any factual allegations.

VI. CLAIMS

Claim One: The allegations in this paragraph constitute legal conclusions, which require no response. To the extent a response may be required, Defendants deny the same.

STATEMENT OF SUPPORTING FACTS

I. Plaintiff's Disabilities

A. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph A and, therefore, deny the same.

B. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph B and, therefore, deny the same.

C. Defendants are without sufficient knowledge or information to form a belief as to the allegations in paragraph C and, therefore, deny the same.

VII. RELIEF

Defendants deny that Plaintiff is entitled to the relief requested.

VIII. MONEY DAMAGES

A. Defendants deny that Plaintiff is entitled to actual or punitive monetary damages.

B. Defendants deny that Plaintiff is entitled to the requested damages.

IX. Defendants deny the allegations in this paragraph.

JURY DEMAND

Defendants demand a jury trial on all issues triable by a jury.

ADDITIONAL RESPONSES

Defendants deny all allegations in the Complaint not specifically admitted herein.

Defendants deny that Plaintiff is entitled to any of the relief requested in the Complaint.

AFFIRMATIVE DEFENSES

Further answers, Defendants affirmatively state as follows:

First Affirmative Defense

For further answer, and as an affirmative defense, Defendants state that Plaintiff's complaint fails to state a claim upon which relief can be granted and should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6).

Second Affirmative Defense

For further answer, and as an affirmative defense, Defendants are entitled to qualified immunity for all claims against them because any actions taken by Defendants in regard to Plaintiff were done under the reasonable and good faith belief that said actions were constitutional and compliant with applicable law.

Third Affirmative Defense

For further answer, and as an affirmative defense, and to the extent that Plaintiff seeks to hold Defendants liable for the alleged actions or inactions of others, his claim is premised on the doctrine of *respondeat superior*, which is not a basis for liability under 42 U.S.C. § 1983 and/or state law.

Fourth Affirmative Defense

For further answer, and as an affirmative defense, Defendants state that punitive damages are not available for the actions alleged in the complaint under federal and state law.

Fifth Affirmative Defense

For further answer, and as an affirmative defense, Defendants state that the injuries and/or damages suffered by Plaintiff were due to and caused by Plaintiff's own acts and conduct and accordingly, the principles of comparative fault should be applied.

Sixth Affirmative Defense

For further answer, and as an affirmative defense, Defendants state that Plaintiff failed to exhaust administrative remedies as to all claims.

Seventh Affirmative Defense

For further answer, and as an affirmative defense, Defendants incorporate each and every additional affirmative defense that may be uncovered or made known during the investigation and discovery of this case. Defendants specifically reserve the right to amend their Answer to include additional affirmative defenses at a later time.

Eighth Affirmative Defense

For further answer, and as an affirmative defense, to the extent that Plaintiff claims punitive damages, an award of punitive damages would be in violation of the Due Process clause since it bears no reasonable relationship to any harm alleged by Plaintiff as a result of Defendants' conduct.

WHEREFORE, having fully answered, Defendants respectfully pray that this Court enter judgment in their favor as to all allegations directed toward them in Plaintiff's complaint [Doc. #1], deny all of Plaintiff's claims for damages, costs, and fees, and award Defendants their costs and any other relief that this Court deems just and proper.

Respectfully submitted,

JOSHUA D. HAWLEY
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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of September, 2018, a copy of the foregoing was filed via the Court's electronic filing system and a copy was mailed first class, postage prepaid, to:

James Elston, #1277919
Tipton Correctional Center
619 North Osage Avenue
Tipton, MO 65081

Plaintiff Pro Se

/s/ Katherine S. Walsh